

**No. 10- COURT'S ORDER WHETHER THE CASE IS OR NOT
APPROVED FOR REPORTING**

[Chapter VIII, Rule 32(2)(b)]

Description of Case

Writ Petition (M/S) No. 56 of 2006

Smt. Bhagwati Devi

Vs.

District Panchayat Raj Officer Nainital & others.

A.F.R. (Approved for Reporting)

Not Approved for Reporting

Date: May 12, 2006

(B.S. Verma, J.)
Initials of Judge.

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 56 of 2006

Smt. Bhagwati Devi W/O Sri Ganga Singh,
R/O village Kaunta, Block Okhalkanda,
Tehsil Dhari, District Nainital.

.... **Petitioner.**

Versus

1. District Panchayat Raj Officer, Nainital.
2. Block Development Officer, Block Okhalkanda,
Tehsil Dhari, District Nainital.
3. Sri Pan Singh, Member, Gram Panchayat Kaunta,
Block Okhalkanda, Tehsil Dhari, District Nainital.
4. Sri Dan Singh, Member, Gram Panchayat Kaunta,
Block Okhalkanda, Tehsil Dhari, District Nainital.
5. Smt. Parvati Devi, Member, Gram Panchayat Kaunta,
Block Okhalkanda, Tehsil Dhari, District Nainital
6. Assistant Development Officer (Panchayat), Block
Bhimtal, District Nainital.

... **Respondents**

Sri Alok Mehra holding brief of Sri Manoj Tewari, learned counsel for the petitioner.

Sri Nand Prasad learned counsel for the respondent no.1, 2 & 6.

Sri B.K. Gupta, learned counsel for respondent no.3 to 5.

Dated May 12, 2006.

Hon'ble B.S. Verma, J.

By means of this writ petition, the petitioner has challenged the notice convening the meeting on no confidence motion against her issued by the District Panchayat Raj Officer Nainital (***for short D.P.R.O.***) on 18-01-2006 on the ground that the notice was given in violation of the provisions of Section 14 (1) of the U.P. Panchayat Raj Act, 1947, which requires 15 days previous notice to be given for a meeting to be convened for the purpose of removing the Gram Pradhan. Attention of this Court has also been drawn to the provision of Rule 33-B(2) framed under the aforesaid Act, which inter-alia provides that "The District Panchayat Raj Officer shall convene a meeting of the Gram Panchayat, under

Section 14 of the Act, on a date to be fixed by him which shall not be later than thirty days from the date of the receipt of the notice.

Relevant facts of the case, which are in dispute, are that Annexure No.2 to the writ petition shows that the impugned notice to convene the meeting was issued on 20th January, 2006 and the date fixed for the meeting of no confidence was 6th February, 2006. It has been contended that the notices have been served on 30th January, 2006. As such, the period between the date of meeting and when the notices were given is less than 15 days. Copy of the order dated 18-01-2006, which was issued by District Panchayat Raj Officer (copy enclosed at page 15 to the writ petition) reveals that the motion was made on 7th January, 2006 and the meeting was being convened on 6-2-2006, i.e. on 31st day. It is thus amply clear that provision of Rule 33-B(2) framed under the said Act was complied with.

The second point under controversy between the petitioner and the respondents is whether previous notice of clear 15 days was served upon the petitioner or not. Section 14 (1) of the Act reads as under:-

“Removal of Pradhan-(1) The Gram Pradhan may at a meeting specially convened for the purpose and of which atleast 15 days previous notice shall be given, remove the Pradhan by a majority of two-thirds of the members of the Gram Sabha present and voting.”

In this case, the petitioner had filed the present writ petition on 31.01.2006 prior to the scheduled date of meeting for no confidence motion. It is not disputed that the said meeting was to be held on 6-2-2006. This Court on 1.2.2006 passed an interim order to the effect that the operation of the impugned notice (Annexure No.2) shall remain stayed observing that the respondents will be at liberty to convene the meeting on fresh motion as per Rules.

A counter Affidavit has been filed on behalf of the contesting respondents as well as by the State on behalf of the respondent nos. 1,2 and 6.

The fact regarding issuance of notice and the date, which was fixed for the meeting of no confidence are not disputed. The only grievance of the petitioner is that she had not been given 15 days clear previous notice before the meeting of no confidence. According to the petitioner the notice was served upon her on 30-1-2006.

The contention of the learned counsel for the petitioner is that the action under Section 14(1) of the Act can be taken only after service of 15 days previous notice upon the petitioner to be issued afresh to move a motion of no-confidence. On the other hand, the learned counsel for the contesting respondents has submitted that this is not the correct legal position because the notice of the intention to move the motion of no-confidence stands in fact and a fresh date has to be fixed by the District Panchayat Officer for considering the motion of no-confidence.

The learned counsel for the respondents relied upon a Division bench Judgment of the Allahabad High Court in the case of “ ***Banwari Lal Shukla Vs. Prescribed Authority, Panchayat Raj Adhikari and others***” [1986, R.D., *paged 171*]. In that case, a notice of intention of moving a motion of no-confidence was presented by seven members of the Gaon Sabha to the Sub Divisional Officer on June 5, 1984. The High Court has accepted the argument of the learned counsel for the respondents and directed the Sub-Divisional Officer to consider the notice received by him on June 5, 1984 as a subsisting one and a direction was given to the authority concerned in view of the provisions of Section 14 of the Act to the effect that he shall now see that 15 days clear notice is given for holding such a meeting and he shall act in accordance with law.

In the present case, only the fact of service of notice is disputed and the petition is being lingered on the ground that the service of the notice is not in accordance with the provision of Section 14 of the Act. According to the petitioner, the notice was served on her on 30-1-2006. In reply, it has been stated in paragraph no. 9 of the Counter Affidavit filed on behalf of the District Panchayat Raj Officer that he fixed the date for no-confidence motion vide order dated 18-1-2006 and he had also dispatched the information of the said meeting to the parties concerned including the officials in time. It is evident that there was no specific denial by the D.P.R.O. that the notice to the petitioner was served on 30-1-2006. In paragraph no. 10 of the writ petition, the petitioner raised the plea that the D.P.R.O. Nainital had issued another order dated 28-1-2006 to the respondent no.2 requesting him to depute some other Gram Panchayat Vikas Adhikari for effecting service of notice/agenda of the meeting upon the members of Gram Panchayat. In the counter-affidavit filed by the D.P.R.O. in reply to the contents of paragraph 10, there is denial of the averments made by the petitioner and only this much is stated that the order dated 18-1-2006 has made it clear that no confidence motion will be considered on 6-2-2006. It appears on the face of record that the reply given by the deponent/DPRO is a vague reply. In fact he had admitted the averment made by the petitioner in paragraph no.10. It can safely be concluded that the notice of no-confidence motion was not served up-to 29-01-2006, rather the service of notice was actually effected upon the petitioner on 30-1-2006 and the meeting for no-confidence motion was scheduled for 6.2.2006, i.e. within a period of less than 15 days from the service of notice.

Learned counsel for the petitioner has placed reliance upon the judgment of the Allahabad High Court in the case of ***“Vidyadhar Tiwari Vs. D.M. Deoria” [(1994) Vol. 1, U.P. Local Bodies and Educational Cases, page 228]***. In that case the notice of no-confidence motion was issued to the Municipality under Section 87-A(2) of the U.P. Municipalities Act, 1916, which is

similar to the provision of Section 14 of the U.P. Panchayat Raj Act in respect of motion for no-confidence. In that case, the notice was given by a registered post on 21-10-1991 fixing the meeting for consideration of the motion on 28-10-1991. It was held that no notice of clear seven days as required under sub-section (3) of Section 87-A of the said Act was given.

Following the ration of the case of *Vidyadhar Tiwari (supra)*, I am of the view that the petitioner was served with the notice of no-confidence on 30-1-2006, while the meeting for consideration of the motion was scheduled for 6-2-2006, hence the notice was not as provided under the provisions of Section 14(1) of the U.P. Panchayat Raj Act, 1947.

In this case, the meeting for no-confidence motion was scheduled for 6-2-2006. The meeting could not be held because of the interim order dated 01-02-2006 passed by this Court. Now, a fresh meeting for no-confidence motion has to be convened by the respondent no.1.

Accordingly, the respondent no.1 is directed to convene the meeting of no-confidence motion as per provisions of Section 14(1) of the U.P. Panchayat Raj Act 1947 and the Rule 33- B(2) framed there-under on the same motion as held earlier.

With the above directions, the writ petition is disposed of finally.

(B.S. Verma, J.)

12.5.2006
RCP